United Nations ECE/MP.PP/C.1/2014/4

Economic and Social Council

Distr.: General
13 January 2014

Original: English

Economic Commission for Europe

Meeting of the Parties to the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters

Compliance Committee

Forty-fourth meeting
Geneva, 25–28 March 2014
Item 7 of the provisional agenda
Communications from members of the public

Findings and recommendations with regard to communication ACCC/C/2012/66 concerning compliance by Croatia

Adopted by the Compliance Committee on 27 September 2013

Contents

		Paragraphs	*Page*
I.	Introduction	1–11	2
II.	Summary of facts, evidence and issues	12–28	3
	A. Legal framework	12–17	3
	B. Facts	18–20	3
	C. Domestic remedies and admissibility	21–22	4
	D. Substantive issues	23–28	4
III.	Consideration and evaluation by the Committee	29–53	5
IV.	Conclusions and recommendations	54–56	9
	A. Main findings with regard to non-compliance	55	9
	B. Recommendations	56	9

GE.14-20192

1420192

Please recycle

I. Introduction

1. On 24 January 2012, the non-governmental organization (NGO) Association for Nature, Environment and Sustainable Development "Sunce" (the communicant) submitted a communication to the Compliance Committee under the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention) alleging that Croatia had failed to comply with its obligations under the Convention concerning public participation with regard to plans and programmes.[1]

2. Specifically, the communication alleges that the Party concerned failed to comply with article 7 of the Convention because of the adoption of waste management plans at the county and city level without inspection control and public participation, as required under the Croatian Environmental Protection Act (EPA) and further regulated by special laws.

3. At its thirty-sixth meeting (Geneva, 27–30 March 2012), the Committee determined on a preliminary basis that the communication was admissible.

4. Pursuant to paragraph 22 of the annex to decision I/7 of the Meeting of the Parties to the Convention, the communication was forwarded to the Party concerned on 8 May 2012. On the same date, a letter was sent to the communicant. Both were asked to address a number of questions from the Committee.

5. The communicant and the Party concerned responded to the Committee's questions on 4 October and 8 October 2012, respectively. The communicant submitted additional information on 22 November 2012.

6. At its thirty-eighth meeting (Geneva, 25–28 September 2012), the Committee agreed to discuss the content of the communication at its thirty-ninth meeting (Geneva, 11–14 December 2012).

7. The Committee discussed the communication at its thirty-ninth meeting, with the participation of representatives of the communicant and the Party concerned. At the same meeting, the Committee confirmed the admissibility of the communication. During the discussion, the Committee posed a number of questions to both the communicant and the Party concerned and invited them to respond in writing after the meeting.

8. The communicant and the Party concerned submitted their response on 10 and 15 February 2013, respectively.

9. The Committee prepared draft findings at its forty-first meeting (Geneva, 25–28 June 2013). In accordance with paragraph 34 of the annex to decision I/7, the draft findings were then forwarded for comments to the Party concerned and the communicant on 18 July 2013. Both were invited to provide comments by 15 August 2013.

10. The communicant and the Party concerned provided comments on 12 August and 2 September 2013, respectively.

11. At its forty-second meeting (Geneva, 24–27 September 2013), the Committee finalized its findings in closed session, taking account of the comments received. The Committee then adopted its findings and agreed that they should be published as a formal

[1] Communication ACCC/C/2012/66 and documents related to it, including responses from the communicant and the Party concerned, are available on the Committee's website from http://www.unece.org/env/pp/compliance/compliancecommittee/66tablecroatia.html.

pre-session document to its forty-fourth meeting. It requested the secretariat to send the findings to the Party concerned and the communicant.

II. Summary of facts, evidence and issues[2]

A. Legal framework

12. According to the Croatian EPA, the public has the right to participate in plans and programmes (art. 16, para. 3). The EPA further requires that the public be informed of their rights to participate in procedures, including the right to present their opinion on proposals for plans and programmes related to the environment which are not subject to mandatory strategic assessment (arts. 140 and 142).

13. The Regulation on Information and Participation of the Public and Public Concerned in Environmental Matters provides the details for carrying out public participation procedures. For plans and programmes relating to the environment, but which are not subject to strategic environmental assessment (SEA), the competent authority has to publish the information about the proposal on its website (art. 3). The public affected by the implementation of the proposed plans and programmes have the rights to submit their views, objections and proposals (arts. 14 and 15).

14. In addition to the above two instruments, the Convention is implemented by the Regulation on Strategic Environmental Assessment of Plans and Programmes.

15. The Waste Act regulates the adoption of waste management plans at the national, county and municipality/town levels (see art. 7). The Waste Management Strategy, as part of the Sustainable Development Strategy, defines waste policy at the national level. The National Waste Management Plan is the technical document that implements the policy of the Strategy. Both the Waste Management Strategy and the National Waste Management Plan are adopted by parliament.

16. County waste management plans are adopted at the county level (including Zagreb), and town/municipality plans are adopted by the local Council. These plans must follow the Waste Management Strategy and the National Waste Management Plan, and their implementation is supervised by the competent authority. They regulate matters on the separation and collection of waste, management of landfills, waste-polluted locations and dump sites and remedial action. Reports on the implementation of the plans are also adopted by the town/municipal council and submitted to the Ministry of Environmental Protection, Physical Planning and Construction (Ministry of Environmental Protection) and the Croatian Environmental Protection Agency. The Agency prepares a synthesis report that is available to the public.

17. Town/municipality waste management plans "heavily lean"3 on town/municipality spatial plans, for which public consultation is obligatory, and may include consultation with private sector stakeholders.

[2] This section summarizes only the main facts, evidence and issues considered to be relevant to the question of compliance, as presented to and considered by the Committee.

[3] See response by the Party concerned of 8 October 2012, para. 16.

B. Facts

18. On 30 March 2011, on the occasion of the preparation of the second national implementation report under the Convention, the communicant sent a letter to the Ministry of Environmental Protection complaining about the lack of inspection control and public participation in the adoption of several waste management plans in the country (see annex to the communicant's response of 4 October 2012), specifically in Split-Dalmatia County.[4] According to the communicant, this was due to the incorrect interpretation of Croatian legislation. The plans in question were adopted after the Convention had entered into force for the Party concerned.

19. By letter of 27 April 2011 (annex 1 to the communication), the Ministry responded that strategies, plans and programmes are documents of sustainable development and environmental protection only when the EPA or sectoral legislation explicitly determines them as such; and that, unlike waste management strategies, waste management plans are not mentioned in either the EPA or sectoral legislation as sustainable development and environmental protection documents. Therefore the provisions for inspection control and public participation do not apply. Waste management plans, at county, municipality or town level, simply implement the Waste Management Strategy.

20. During the discussion before the Committee at its thirty-ninth meeting, both parties confirmed that a public participation procedure had taken place according to the Convention for the adoption of the Waste Management Strategy.

C. Domestic remedies and admissibility

21. The communicant states that the websites of the two major cities in Split-Dalmatia County, Split and Kastela, included information on the adoption of the plans, but that the public was not involved in the process. The communicant submitted letters of complaint to the City of Split, the City of Kastela and the Ministry of Environmental Protection. As a result of the communicant's action, the public was apparently involved in the adoption of the Split and Kastela waste management plans.

22. However, the communicant submits that, for the other plans, the public was not duly informed about their adoption or the process of adoption. As a result, the communicant missed the deadlines set by national law to challenge the plans before domestic courts.

D. Substantive issues

23. The communicant alleges that by adopting several waste management plans without carrying out inspection control and public participation procedures, the Party concerned failed to comply with article 7 of the Convention.

24. In the view of the communicant, the provisions for public participation included in the EPA, a framework law of general application, should apply to all special laws, including the Waste Act, as long as special laws do not explicitly exclude the application of the Environmental Protection Act's general provisions. Since the Waste Act does not specifically exclude the application of public participation procedures under the EPA, waste management plans should be adopted following public participation procedures. The fact that the EPA does not specifically refer to "waste management plans" is irrelevant, because

[4] The communicant refers to Hvar, Sinj, Stari, Grad, Vis, Rgorac, Marina, Otok, Postira, Sucuraj, Zagvozd, etc.

waste management plans concern the management, recovery and recycling of waste and thus constitute an essential element of sustainable development and resources management.

25. The communicant also stresses that the fact that public consultations for the adoption of the Split and Kastela waste management plans eventually took place, after the communicant had sent complaints to the local authorities and the Ministry, demonstrates that according to the law of the Party concerned, public participation should be provided for the adoption of town/municipality waste management plans, but the provisions of the law are not clear on this subject.

26. The Party concerned in general submits that there is no non-compliance with the Convention, and that the communicant's complaint is manifestly unfounded.

27. The Party concerned points out that by being labelled as "plans" waste management plans do not immediately fall within the scope of article 7 of the Convention. They operationalize and implement the policy contained in the Waste Management Strategy, as part of the Sustainable Development Strategy and the State and county waste management plans, the latter of which are subject to public participation in the context of strategic assessment. Therefore, there is no obligation for early public participation under article 6, paragraph 4, of the Convention.

28. The Party concerned further explains that the elements of waste management plans at the municipal/town level (i.e., the separation and collection of waste, the management of landfills, waste-polluted locations and dump sites and remedial action) are not as such referred to in article 6, paragraph 6, of the Convention. Thus, these plans are not programmes or policies and they do not include any information related to the description of sites, significant impacts on the environment and possible emissions or alternatives, or locations for new waste management facilities or sites for new landfills.

III. Consideration and evaluation by the Committee

29. Croatia ratified the Convention on 27 March 2007. The Convention entered into force for Croatia on 25 June 2007.

30. Waste management planning in Croatia is decided at three government levels (see art. 7 of the Waste Act, para. 15 above): at the national level (Waste Management Strategy and National Waste Management Plan); at the county (regional) level (county management plan); and at the local (town/municipality) level (municipality/city/town management plan). County plans should be in line with the framework described in the national strategy, and municipality plans should be in line with the provisions of the county plans. In addition, waste producers are also obliged to prepare waste management plans.

31. There is no issue of flawed public participation in the process of adopting the waste management planning documentation at the national level. During the discussion at the Committee's thirty-ninth session, the Party concerned and the communicant agreed that the law of the Party concerned requires the carrying out of public participation for the adoption of such a plan, and the communicant confirmed that when the public participation procedure was provided for adoption of the Waste Management Strategy, members of the public, including the communicant, were able to participate.

32. Both parties agree that there is an obligation of the authorities to carry out public participation for the preparation of county management plans. Apart from the case of Split-Dalmatia County, no other examples were provided to the Committee to demonstrate a persistent pattern in the authorities' practice demonstrating non-compliance with the public participation requirements prescribed by law.

33. For these reasons the Committee does not examine whether the law and practice of the Party concerned is in compliance with the Convention in the case of the preparation of the national Waste Management Strategy and the county management plans. The Committee thus focuses on the law and practice of the Party concerned with regard to the adoption of municipal waste management plans.

Waste management plans as plans relating to the environment (art. 7)

34. According to the communicant municipal waste management plans fall within article 7, but according to the Party concerned these plans are only technical documents implementing the decisions taken under the national and county management plans, which were prepared following public participation procedures. Yet, both parties agree that waste management plans are documents relating to the environment.

35. What constitutes a "plan" is not defined in the Convention. The fact that a document bears in its title the word "plan" does not necessarily mean that it is a plan; rather it is necessary to consider the substance of the document (see also findings on communication ACCC/C/2008/27 (United Kingdom) (ECE/MP.PP/C.1/2010/6/Add.2, para. 41)). The Committee thus considers the contents of the municipal waste plans of the Party concerned, as well as the legal effects of these plans on the public, to determine whether they fall within the ambit of article 7 and the extent to which public participation procedures should apply under the Convention.

36. According to the Waste Act (art. 11), the municipality waste plan contains: (a) measures for separate collection of municipal waste (such as the locations for the containers for special waste or the contractual relationship between the company dealing with a special waste category at the national or regional level and the company handling waste at the local/municipality level); (b) measures for the management and supervision of municipal waste landfills (such as the timetable of opening and closing hours for landfills); (c) a list of waste-polluted locations and dump sites; and (d) a programme of action and financial provisions for the remediation for the sites mentioned in section (c).

37. The Committee notes that the municipality waste management plan may implement at the local level what was already decided in the national/regional waste management documentation. For instance, if the national waste management plans contain the general technical requirements for waste management facilities (Waste Act, art. 9, para. (2) 4), the county waste management plan provides for the construction planning of such facilities (Waste Act, art. 10, para. (1) 4) according to the technical requirements in the national plan, and the municipal waste management plan requires the local waste operator to transfer and store the waste to one of the facilities listed in the county plan (Waste Act, art. 11, para. (1) 1). Similarly, where the national plan sets the general requirements for the management of special waste categories (Waste Act, art. 9, para. (2) 2), the county plan defines measures for separation of waste in the county (Waste Act, art. 10, para. (1) 3), and the municipality lists the specific locations of the containers (Waste Act, art. 11, para. (1) 1).

38. Thus, the municipality waste management plan does not simply copy the decisions contained in the national/regional waste management plans and the spatial management plans (where there is provision for the landfill sites, for instance); rather, in order to implement the general framework of waste management set at the national/regional level, it makes specific provisions and includes details for waste management at the local level. This is further demonstrated by the contents of the plans of Ivanska and Cres,[5] which

[5] Submitted by the Party concerned on 15 February 2013.

provide for measures for the treatment of specific waste (medical waste, construction waste, etc.) or for the landfill.[6] Besides, there would be no reason for municipal waste management plans to exist if all the details had already been well established in the national and regional management plans, as well as in the spatial management plans.

39. While these municipality waste management plans implement the national and county waste management plan and the national strategy at the local level, they are not only theoretical orientations on waste management or only a repetition of the subjects treated in the national/county waste management documentation. It is apparent to the Committee that they contain considerations specific to the region concerned on the impact of waste management, on possible emissions, possible locations and facilities, which are without doubt of interest to the public and therefore should be subject to public participation according to article 7. Moreover, whether a document sets the framework for future development consent is not a determining factor of its nature as a plan under article 7 or not.

40. The fact that the waste management plans are not mentioned in the EPA and in sectoral laws as sustainable development and environment protection documents is not relevant; an insufficient coverage by the legislation of one of the subject matters of the Aarhus Convention cannot be invoked as an excuse to avoid its application to an activity which is obviously related to the protection of the environment.

41. For these reasons, the Committee finds that municipal waste management plans are plans within the purview of article 7 of the Convention.

Public participation in the preparation of waste management plans

42. In order to evaluate whether the Party concerned is in compliance with the Convention, the Committee examines both the regulatory framework and the established practice for the preparation of municipal waste management plans, which may already meet the minimum standards for public participation set by article 7.

43. As set out in article 7, the Party concerned has to make the appropriate practical and/or other provisions for the public to participate during the preparation of the plan and in accordance with three specific provisions of article 6, paragraphs 3, 4 and 8, of the Convention. This has to be done "within a transparent and fair framework, having provided the necessary information to the public", while specific reference is made to the objectives of the Convention.

44. In its article 16, paragraph 3, the Croatian EPA lays down the general right of the public to participate in procedures, inter alia, for the development and adoption of plans. For some plans, public participation procedures under SEA apply; for other plans, the procedures set out in EPA section IX apply, in particular EPA article 142, as well as article 14 of the Regulation on Information and Participation of the Public and the Public Concerned in Environmental Matters (Regulation on Information and Public Participation), which provides the details for carrying out public participation procedures. Since no SEA is required for waste management plans, the second set of provisions for public participation are relevant.

45. EPA article 142 provides for the right of the public to present its opinions, comments and proposals on drafts of plans and programmes related to the environment. The same article also sets out the obligation of the public authorities to ensure timely and efficient public participation in the process of drafting and amending plans within their

[6] The communicant also provided contents of the Split management plan on 11 February 2013.

competence. Article 140 requires proper dissemination of information in the early phase of the procedure, when all options are open, elaborates on the content of the public notice, sets a minimum deadline of 30 days and obliges the competent authority to review the results of public participation and inform the public of its decision.

46. The EPA also provides that the list of the plans requiring public participation, as well as the identification of the public which may participate, should be established by way of a regulation (art. 142, paras. 3 and 4).

47. The Regulation on Information and Public Participation (arts. 3, 4 and 14) adds elements for public participation in the preparation of plans, in particular with regard to the obligation of the competent authority to inform the public through its website and the content of the public notice. Like the EPA, the Regulation does not define the plans for which this procedure applies, and mentions that these would be determined by law. It identifies the public which may participate as "the public which may be affected by those plans [...] during their implementation".

48. On the basis of the above, the Committee finds that the Party concerned has made regulatory arrangements for the public to participate during the preparation of plans relating to the environment. More specifically, the Committee understands that the requirements of article 6, paragraphs 3, 4 and 8, incorporated in article 7, of the Convention, are implemented through EPA articles 140 and 142, and the requirement of providing the necessary information to the public is implemented in particular through the Regulation on Information and Public Participation (arts. 3, 4 and 14).

49. However, the Committee notes that the EPA (art. 142, para. 3), as well as the Regulation on Information and Public Participation (art. 14, para. 3), stipulate that the list of plans relating to the environment which are not subjected to SEA, but for which public participation is required, will be determined by law/regulation. According to the information submitted to the Committee, there is yet no law/regulation in place as to this type of plans, and this creates uncertainty as to the application of the public participation procedures.

50. In addition, according to the English translation of the laws provided to the Committee, there is no consistency as to whether the public participates before the first draft of the plan or only once there is a draft available (see text of the EPA (art. 142, para. 2), and the Regulation on Information and Public Participation (art. 14, para. 1), referring to the "draft proposal of the plans", as compared with the general principle for public participation in the development of plans enshrined in the EPA (art. 16, para. 3)).

51. For these reasons, the Committee finds that the present arrangements under the law of the Party concerned are not sufficiently clear to ensure that the requirement of article 7 for a transparent framework is met. Thus, the Party concerned fails to comply with article 7.

52. To illustrate its allegations, the communicant referred to the examples of the preparation of the Split and Castela municipality waste management plans, in which in two cases public participation was carried out, further to the communicant's request. Apart from these two cases, the Committee was not provided with sufficient information to assess whether there is a consistent practice as to the conduct of public participation for the preparation of other municipality waste management plans. On the basis of the information provided, and given that the Split and Castela municipality waste management plans were isolated cases, since public participation was provided at the communicant's request, the Committee is not in a position to conclude whether there is a persistent practice by the authorities of the Party concerned not to make the appropriate practical and/or other provisions during the preparation of the municipality waste management plans. However, the fact that the framework is not clear and transparent (see above) suggests that there is uncertainty in practice on whether public participation should be provided. The Committee

also emphasizes that article 7 obliges public authorities to organize public participation procedures, as required by law; hence, it should not be for the public to remind the authorities of their right to participate.

Clear and transparent framework (art. 3, para. 1)

53. Based on the considerations above, the Committee finds that the legislation in force in the Party concerned fails to provide for a consistent and uniform application throughout the territory and is not clear as regards public participation in the preparation of municipality waste management plans, and therefore is not in compliance with article 3, paragraph 1, of the Convention.

IV. Conclusions and recommendations

54. Having considered the above, the Committee adopts the findings and recommendations set out in the following paragraphs.

A. Main findings with regard to non-compliance

55. The Committee finds that:

(a) The present arrangements under the law of the Party concerned are not sufficiently clear to ensure that the requirement of article 7 for a transparent framework is met. Thus, the Party concerned fails to comply with article 7 of the Convention (para. 51);

(b) The Committee finds that the legislation in force in the Party concerned fails to provide for a consistent and uniform application throughout the territory and is not clear as regards public participation in the preparation of municipality waste management plans, and therefore is not in compliance with article 3, paragraph 1, of the Convention (para. 53).

B. Recommendations

56. The Committee, pursuant to paragraph 36 (b) of the annex to decision I/7 of the Meeting of the Parties to the Convention, and noting the agreement of the Party concerned that the Committee take the measures requested in paragraph 37 (b) of the annex to decision I/7, recommends to the Party concerned that it ensure that a transparent framework is in place providing for appropriate practical and/or other provisions for the public to participate during the preparation of municipality waste management plans, by, inter alia, including municipality waste management plans in the list of plans relating to the environment which are not formally subjected to SEA, but for which public participation is required, so that article 7 of the Convention is clearly applicable to such plans.